

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FOTINEE FARAH ZAKI,)
Plaintiff,)
)
VS.) Civil Action No.: 04-10705 RWZ
)
UNITED STATES OF AMERICA,)
Defendant.)

PLAINTIFF'S MOTION FOR NEW TRIAL/RECONSIDERATION OF JUDGMENT

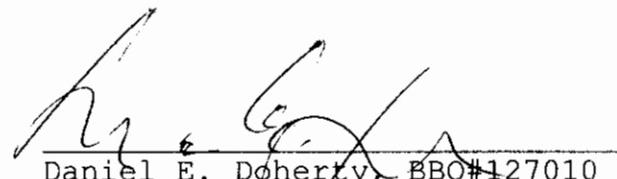
Plaintiff respectfully requests, pursuant to Fed. R. Civ. P. 59, that the Court grant her a new trial on the grounds that the Court's entry of judgment in favor of the Defendant was against the weight of the evidence. In finding in favor of the Defendant, the Court reasoned that both operators were negligent in causing the collision, but arbitrarily assigned a greater degree of negligence to Ms. Zaki, thereby barring her from any recovery for her substantial damages.

In explaining her decision, the trial judge stated that she credited Mr. Keen's testimony that he entered the intersection on a green light, and, therefore, that Ms. Zaki must have entered the intersection when the light for her was either yellow or red. The judge also found, however, that Ms. Keen was also negligent for failing to see Ms. Zaki's car in the intersection before proceeding. Since Mr. Keen's vehicle was in a complete stop before he proceeded, the collision would have

been completely avoided had he seen Ms. Zaki, and, therefore, the degree of his negligence was at least as great as that of Ms. Zaki. In his testimony, Mr. Keen offered no explanation as to why he failed to see Ms. Zaki's car, which was three quarters of the way through the intersection at the point of the collision. Although the judge added that she believed that Ms. Zaki's speed of 25 to 30 miles per hour was excessive, it was never suggested, even by Defendant, that speed was a factor in the collision.

For these reasons, Plaintiff respectfully requests that the Court reconsider its judgment as to the percentages of fault for the respective negligence of the parties so that the degree of negligence attributable to Plaintiff is not greater than 50%, and grant Plaintiff a new trial on the question of liability.

FOTINEE FARAH ZAKI
By her Attorney,



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September 16, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail and on 9/16/05

